

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of

EMPIRE CENTER FOR PUBLIC POLICY,

Petitioner,

-against-

**AFFIDAVIT OF JOHN J.
MILLER IN SUPPORT OF
RESPONDENT'S VERIFIED
ANSWER**

Index No. 156486/2018

NEW YORK CITY POLICE PENSION FUND,

Respondent,

For a Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules.

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STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

JOHN J. MILLER, being duly sworn, deposes and says:

1. I am Deputy Commissioner for Intelligence and Counterterrorism for the New York City Police Department (the "NYPD"), and I have served in this capacity since January 6, 2014. In this role, I have general oversight of the Intelligence Bureau, which is the unit within the NYPD that gathers and analyzes information to assist in the detection and prevention of unlawful activity, including acts of terror. Additionally, I have overall responsibility of the various units of the Intelligence Bureau and therefore, am familiar with the operations and the security concerns outlined below.

2. In addressing these matters, I draw on my background not only as the NYPD Deputy Commissioner for Intelligence and Counterterrorism, but also my over 10 years in law enforcement and counterterrorism intelligence.

3. Prior to my current role, I served as the Deputy Director of the Intelligence Analysis Division at the Office of the Director of National Intelligence (“ODNI”), where I worked as part of the Analysis Division team to support the National Intelligence Managers and the Unifying Intelligence Strategies relating to global regions and threats. Prior to service with the ODNI, I served as Assistant Director of the Federal Bureau of Investigation (“FBI”), heading the Office of Public Affairs and serving as the FBI's National Spokesman. In that role, I was also the executive responsible for developing a compliance system to ensure that the FBI's mission as a member of the US Intelligence Community was being carried out. I have also served as the Commanding Officer, Counter Terrorism and Criminal Intelligence Bureau of the Los Angeles Police Department (“LAPD”) and as Deputy Commissioner, Public Information for the NYPD.

4. I submit this affidavit at the request of the New York City Police Pension Fund and in support of Respondent's Verified Answer in this proceeding. I am familiar with the facts and circumstances stated herein. This affidavit is based upon my personal knowledge, as well as upon information and belief based on information provided by other employees of the NYPD and on records maintained by the NYPD in the ordinary course of business, which I believe to be true and correct.

5. For ease of discussion, the term “police officer” is used in this affidavit to refer to persons serving in the job title police officer, and in the promotional series of job titles for police officers: police sergeant; detective; police lieutenant; police captain; police deputy inspector; police inspector; police deputy chief; police assistant chief; police chief and chief of department.

6. I am informed that Petitioner seeks the disclosure of the full names of all retired NYPD police officers, and that Petitioner intends to publish these names on its website, identified as retired NYPD officers, together with other individual information about each retired officer

previously obtained, such as the amount of his/her pension, and the number of years of his/her service in the NYPD. It is my opinion that the intended publication of these retired officers' full names on the internet, would constitute a danger to the life and safety of these retirees and their families.

7. The dangers of police work are readily apparent. In light of these dangers, police officers are armed. Police officers also may carry their weapons while off-duty. As part of their duties, police officers frequently interact with dangerous suspects, many of whom have lengthy criminal histories and are sometimes violent and/or armed. A police officer's duties necessarily place him or her in an adversarial relationship with such individuals. Officers arrest, investigate, interrogate, execute search warrants and testify against these dangerous suspects.

8. Given these dangers, maintaining the confidentiality of officers' personal information is of critical importance. Officers' residential addresses, the identity of their family members and other personal information are never disclosed by the NYPD. Local, state, and federal laws protect such personal identifying information when officers must disclose such information to third parties to obtain medical care, purchase homes, or otherwise handle their personal affairs.

NYPD Officers' Full Names are Not Normally Disclosed to Criminal Suspects and Defendants

9. An officer's full name can lead to the discovery of his/her home address through a simple internet search. This puts officers and their families at increased risk of serious harm, including burglaries or robberies, since it literally gives driving directions right to the officer's front door.

10. Accordingly, officers' full names are normally not disclosed. NYPD officers in all ranks wear a nameplate that only has the officer's last name. Those in the ranks of police officer,

sergeant and detective also wear a police shield while on duty that indicates their rank and a shield number. Those in the ranks of lieutenant and above wear a shield with their rank but no shield number.

11. There are two exceptions to these rules. First, officers in any rank performing plainclothes duty generally wear a shield but no nameplate. Second, officers in any rank performing undercover duties (described more fully below), do not wear a nameplate or a visible shield.

12. In addition, when officers sign police paperwork, they sometimes use only their rank and last name (and their shield number if they have one.) Arrestees only receive copies of the arrest paperwork as *Rosario* material before hearings or a trial. While the officer who swears to an accusatory instrument filed in criminal court provides his first and last name, that officer is not necessarily the officer who physically apprehended the criminal defendant. Accordingly, criminal defendants do not necessarily know the full name of the officer who arrested them. Criminal defendants are even less likely to know the identity of officers who were involved in an underlying investigation of the criminal defendant's activities.

Deaths, Near-Deaths and Injuries of Officers, Both in New York City and Around the Country, Shows the Heightened Dangers of Police Work in the Current Threat Environment

13. In New York City alone, there have been far too many examples of the readily apparent dangers of police work, particularly in light of the current threat environment in which officers operate. Police Officers Wenjian Liu and Raphael Ramos were assassinated in Brooklyn in December 2014. In 2015, there would be two more deaths; Police Officer Brian Moore was shot while questioning an individual and Police Officer Randolph Holder was shot and killed while pursuing an armed subject. In November 2016, NYPD Sergeant Paul Tuozzolo was shot and killed

by an individual who was evading the police. In July 2017, Police Officer Miosotis Familia was killed in the line of duty while in her police vehicle in the Bronx.

14. Even more recently, in February 2018, a resident of Brooklyn, New York, Victor Kingsley, was arrested on charges of using a weapon of mass destruction, after attempting to send an explosive device to a member of the NYPD. Kingsley had found the officer's home address through an internet search as well as through various other legal processes, including civil litigation, but the address results were off by a few numbers. As a result, the bomb failed to reach the officer, and instead was delivered to and killed a neighbor when he opened the package. Upon execution of a search warrant post arrest, other explosive devices were found in various stages of construction as well as documents demonstrating other NYPD officers may have been future targets. Indeed, one such target was identified by name and address as a retired NYPD member of service. The extent to which the retired member of service was an actual or potential victim in this case is greater than what is articulated here, however, the prosecution of this case has not yet been completed and the release of such facts that have not yet been made public could impede the ongoing criminal prosecution.

15. While the number of NYPD officers killed in the line of duty is higher than in most other cities, this problem is not exclusive to New York City. In 2018, there have been approximately thirty (30) officers killed in the line of duty across the United States. In prior years, for example, in April 2017 an Assistant Chief Deputy Constable in Texas, a 30-year veteran, was shot and killed. In July 2016, a total of twenty (20) officers were shot in Dallas and Baton Rouge, eight (8) of those officers died as a result of these shootings. In November 2016, two (2) officers in Des Moines, Iowa were killed in an ambush-style attack. On May 2, 2017, in Chicago, Illinois

there was an attempted murder of two (2) officers who were shot and wounded while conducting an investigation.

16. In addition, dangerous suspects, many of whom have lengthy criminal histories, who are sometimes violent and/or armed, violently assault police officers, whose duties necessarily place them in adversarial relationships with such individuals. In such incidents, police officers may suffer serious injuries. For example, on August 15, 2016, Akram Joudeh, a 32-year old Jordanian citizen pending deportation from the United States, attacked an NYPD officer in Manhattan with an 11-inch meat cleaver after he found a parking boot on his car. Several NYPD officers, as well as Joudeh, were taken to the hospital following this attack.

17. The FBI collects and publishes annual data from law enforcement agencies around the country in its Uniform Crime Report, which includes a section, "Law Enforcement Officers Killed and Assaulted." This data shows that in 2014, fifty-one (51) law enforcement officers in the United States were feloniously killed in the line of duty and 48,315 were assaulted, in 2015 forty-one (41) law enforcement officers were feloniously killed and 50,212 were assaulted, in 2016 sixty-six (66) law enforcement officers were killed and 57,180 were assaulted, and in 2017 forty-six (46) enforcement officers were killed and 60,211 were assaulted.

Threats to Police Officers, Retired Officers and Their Families

18. As a result of the ongoing dangers of police work combined with the many threats directed towards the lives of officers, and sometimes their families as well, the Department maintains a Threat Assessment and Protection Unit ("TAPU"), which is part of the Intelligence Bureau, whose purview includes investigating threats against police officers. Between January 1, 2018 and September 9, 2018, there have been a total of 231 Threats Cases received by TAPU. In

2017, there were a total of 361 Threats Case received. In 2016, there were a total of 428 Threats cases received.

19. Of the 231 threat cases in the 2018, 113 involve direct threats to NYPD officers where the subject has mentioned or directly stated that s/he was going to retaliate and/or harm a police officer because of their interactions with police officers. An additional 101 cases include general threats against police officers. The remaining seventeen (17) cases were threats against appointed or elected officials.

20. Notably, a threats case does not necessarily end solely because a police officer who has been threatened retires. In fact, if TAPU believes that a threat continues to exist even after the member of service retires, the threats case will continue. There have not yet been any new cases taken for already retired members of service in 2018. Although a threats case may not always be initiated, there are a number of instances where a retired member of service has been threatened. For example, in 2018, a person making a complaint to the Civilian Complaint Review Board (“CCRB”) stated to an investigator that a detective who died in the line of duty “got what he deserved,” and that another officer, who was retired at the time, was next. In 2017, there was an anonymous Crime Stopper tip stating that gang members in the caller’s building were planning to murder a retired police officer residing in the building.

21. There have been incidents in which the safety of officers and their families were threatened after disclosure of the officers’ personal information. For example, after the home address and personal information of a precinct commander who policed the Occupy Wall Street protests were revealed, his family received death threats by telephone. Another police captain involved in policing these protests received threats that she would be assaulted when she arrived at her home after protesters chanted her home address.

22. The safety of retired officers and their families has also been threatened, after the full names of retired officers were provided to Petitioner in 2008 in response to an earlier FOIL request, and published by Petitioner on its website.

23. In one instance, a retired police captain was not only threatened, but violently assaulted. This occurred at a restaurant, where the retired captain was recognized by an individual whom he had arrested in the past. The individual violently assaulted the captain, after claiming that he knew where the retired captain lived and knew that the captain had a new baby at home.

24. In another instance, another retired police captain, who had been heavily involved in investigations of organized crime during his career, and who was concerned about retaliation by individuals against whom he had testified, was approached by a suspicious individual at his post-retirement place of business, who asked questions about the captain's pension.

25. After TAPU receives and evaluates a threat, measures are taken to safeguard the officer and his or her family. Depending on the circumstances, for officers who reside in New York City, these measures may include giving the officer a special radio that provides expedited communication with the local police precinct, having a police car do regularly scheduled drive-bys of the officer's home, and in extreme situations, stationing a police car in front of the officer's home. For officers who reside in one of the six suburban New York counties where officers are permitted to reside, TAPU contacts the police department where the officer resides, and makes arrangements for suitable protection of the officer and his or her family.

26. Additionally, TAPU may initiate a case for the families of an officer killed in the line of duty. Following the media release of information and photos of the families of an officer killed in the line of duty, it is common for the family to receive threats. Indeed, TAPU took on

such cases after Police Officers Lui and Ramos, Sgt. Tuozzolo and Police Officer Miosotis Familia were killed in the line of duty.

27. As noted above, threats have been made not just against active duty officers, but against retired officers as well. However, retired officers are less connected to the protections of the NYPD, and therefore are as, and perhaps even more, vulnerable than active officers. For example, when an active duty officer does not appear at roll call on a day she or he is scheduled to work, and is not otherwise reachable, the NYPD will send someone to the officer's home to determine whether the officer is safe. Once an officer retires, these protections are no longer available.

28. Indeed, 14,796 retired NYPD Officers (which is approximately 30% of the total) live out-of- state, where the NYPD has no jurisdiction whatsoever. An additional 22,102 retired officers (approximately 45%) live in-state, but outside New York City; the NYPD's efforts on their behalf are largely limited to advising the police authorities in the area where a retiree resides of any information concerning a threat or possible danger to a retiree or his/her family. Only 11,934 retired officers (approximately 24%) live in New York City, where the NYPD is best able to provide assistance if needed. It is well settled that the NYPD is the largest police department in the country with various resources that are not available to other police departments. As such, most police departments outside of New York City simply do not have the resources to provide adequate protection to retired members of service from other jurisdictions who have been threatened.

Undercover Officers

29. Police undercover work is particularly dangerous. Such undercover work is generally undertaken to further an on-going investigation. Most NYPD officers who work

undercover are assigned to the Organized Crime Control Bureau, the Narcotics Division (which is part of the Organized Crime Control Bureau), the Gang Unit, the Intelligence Bureau or the Counterterrorism Bureau.

30. Police officers working undercover investigate criminal activities that include organized crime, narcotics and weapons trafficking, terrorist plots, gang violence and murder. While working undercover, officers interact closely with persons engaged in dangerous criminal activities.

31. There are numerous NYPD officers working undercover at any one time. Over the course of their careers, thousands of NYPD officers have worked undercover, some on long-term assignments.

32. The extreme dangers of undercover work are recognized by the courts. Criminal trials are normally open to the public and witnesses are generally required to state their names for the record when they testify. However, the courts, recognizing the extraordinary dangers posed to those who perform undercover police work, frequently maintain the confidentiality of an undercover officer's identity (including his or her name) by changing the usual procedures in one of several ways.

33. Depending on the circumstances, judges sometimes order that the courtroom be closed to the press and public (and sometimes even the criminal defendant's family and friends are excluded) during an undercover officer's testimony.

34. In other circumstances, judges allow the undercover officer to testify under the identity "Undercover Officer Number ____" (commonly abbreviated UC #____.) In the alternative, a judge may decide that the undercover officer should testify using an alias, rather than his or her name.

35. The NYPD also takes extra steps to protect the identity of its undercover officers. Every year, the City's Office of Payroll Administration prepares a list of active duty employees of the City of New York, which contains these employees' names, salaries and job titles. I am informed that this list is provided to individuals and organizations, such as Petitioner, which make FOIL requests for this information. However, the NYPD does *not* provide this information for its undercover officers.

To Protect Federal Agents and their Families, the Names of Retired Federal Law Enforcement Agents, Some of Whom Have Worked Directly with NYPD Officers in Joint Task Forces, are Not Released in Response to Federal Freedom of Information Act Requests

36. Finally, as discussed above, I have had extensive experience working in federal law enforcement and intelligence agencies. During the course of their careers, many NYPD officers work side-by-side in Joint Task Forces with federal law enforcement agents from many U.S. government agencies including the Federal Bureau of Investigation, the Drug Enforcement Agency, the Department of Homeland Security, the U.S. Customs and Border Protection agency, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the U.S. Marshals Service, and the IRS. Indeed, the first such Joint Task Force was established in New York City in 1980. The NYPD officers and federal agents investigate and apprehend highly dangerous persons who seek to engage in such nefarious activities as terrorism and drug trafficking.

37. There are now approximately 698 NYPD officers working in these Joint Task Forces. Many more NYPD officers who have served in these Joint Task Forces since 1980 have since retired. Since 2014, there have been between 563 and 669 NYPD officers working in the Joint Task Forces in any given year.

38. The U.S. Government does not publicly disclose the names of its retired law enforcement agents, including those who have served in these Joint Task Forces, to prevent harm

to these retired agents and their families. When record requests are made pursuant to the Freedom of Information Act (the federal analogue to FOIL), the U.S. Government redacts the names of these agents to protect them, whether they are retired or on active duty. It would be ironic if the NYPD officers who work side by side with these federal agents to protect the populace from grave dangers, were not afforded the same degree of protection from harm when they have retired.

39. In summary, the far too many examples of attacks on police in recent years demonstrate the dangerous conditions in which officers operate simply by wearing a uniform, being present within the community in that uniform, and responding to calls for help from the communities they swore to protect. These concerns for safety do not simply evaporate upon an officer's retirement. In fact, as noted above, those officers are not afforded the same protections as when they were active members of service. A release of their full names to Petitioner, and the subsequent publication of these names on the internet, makes them and their families' potential targets with little to no recourse or protection, which is just too great a risk. These retired officers will forever be looking over their shoulders, on constant high alert.



JOHN J. MILLER

Sworn to before me this
14 day of September, 2018.



Notary Public

NICOLE ANNE GIAMBARRESE
Notary Public, State of New York
No. 02G16372336
Qualified in Rockland County
Commission Expires 03/19/2022